IN THE

Supreme Court of the United States

SEP 22 1960
JAMES R. BROWNING, C

October Term, [redacted] 1961

No. ~~10~~ 9, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,

Defendants.

Motion of State of California for Leave to File Brief Amicus Curiae, and Brief of State of California as Amicus Curiae in Support of Petitions for Rehearing Filed by the States of Alabama, Louisiana and Mississippi.

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STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,

Defendants.

MOTION.

The State of California, sponsored and appearing by its Attorney General, respectfully moves that it be permitted to file a brief Amicus Curiae, pursuant to Rule 42 of this Honorable Court, in support of the petitions for rehearing filed herein by the States of Louisiana, Mississippi, and Alabama.

STANLEY MOSK,
Attorney General,

CHARLES E. CORKER,
Assistant Attorney General,
Attorneys for Amicus Curiae,
State of California.

IN THE

Supreme Court of the United States

October Term, 1959.
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UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,

Defendants.

Brief of State of California as Amicus Curiae in Support of Petitions for Rehearing.

Interest of the State of California.

This Honorable Court is, of course, fully aware of the key roll played by California in the long and continuing controversy relating to Federal versus State ownership of submerged lands adjacent to our national coastline. As a coastal state with vast governmental and economic interests in its offshore lands, California is vitally concerned that the Submerged Lands Act of 1953 receive a contruction consonant with Congressional purpose and general principles of equity and justice.

ARGUMENT.

It Is Respectfully Urged That a Proper Consideration of the Congressional Purpose in Enacting the Submerged Lands Act of 1953 Requires That the Petitioning States Be Accorded Rights and Title Equal to Those Accorded the States of Florida and Texas.

It is not our purpose to add to nor dispute this Honorable Court's careful statement of the extensive legal and factual matters relevant to the instant controversy. Rather, it is our position, based upon the very materials set forth by the Court, that the majority opinion in *United States v. Louisiana, et al.*, insofar as it denies the claims of Alabama, Louisiana and Mississippi, is erroneous in that it fails to give proper weight to the Congressional policies which led to the enactment of the Submerged Lands Act of 1953.

As recognized by this Court, the legislative history and language of the Submerged Lands Act unequivocally demonstrate that the purpose of the Act was to confirm in the various States title to adjacent submerged lands in accordance with prevailing opinion and usage prior to the 1947 decision in *United States v. California*. Typical of the numerous statements bearing upon Congressional purpose to be found in committee reports and other legislative materials is the statement in House of Representatives Report No. 695, 82nd Congress, 1st Session, to accompany H. R. 4484 (July 12, 1951), that ". . . Title II recognizes, confirms, vests and establishes in the States the title to submerged lands, which they have long claimed, over which they have always exercised all the rights and attributes of ownership," and the statement in Senate

Report No. 133, at page 24, that the legislation ". . . is an act of simple justice to each of the forty-eight states in that it reestablishes in them as a matter of law that possession and control of the lands beneath navigable waters inside their boundaries which have existed in fact since the beginning of our nation . . .". Of special interest concerning the implementation of this Congressional purpose is Section 3(a) of the Submerged Lands Act which provides:

> "It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof";

It is apparent that the Act was not simply intended to create or establish *new* rights and title in the States, in which event a technical construction of the Act as the sole source of the States' title might be justified. Rather, Congress determined that as a result of innumerable judicial statements and uniform acquiesence throughout most of our national history, the States, in equity and justice, had *existing* rights in

their submerged lands, even though they had failed to obtain legal recognition of these rights by means of litigation. Significantly, in declaring the effect of the Act upon the States' title, ownership, rights, and powers in submerged lands, Congress used the words "recognized" and "confirmed" *before* the words "established," "vested," and "assigned." We cannot conceive that Congress intended that the extent of these rights, which have their origin in fundamental principles of justice and morality, should be determined by purely legalistic tests without regard to the application of such principles. Rather, in concurrence with the views of the dissenting justices herein, we respectfully submit that the salutary Congressional purpose of protecting the State's title to lands which they have "long claimed" and over which they have "exercised all the rights and attributes of ownership," will best be served by looking to the totality of the claims, understandings, expectations and uses of the States throughout their history. We further submit that a State's boundaries at the time of its admission can generally be determined most accurately by recourse to all of these considerations. We believe that an examination of the totality of experience of the States herein involved reveals that the rightful expectations and degree of justified reliance of the petitioning States are equal to those of the States whose claims were approved herein. Therefore, upon application of a test more consistent with Congressional policy, the rights of the petitioning States should be recognized as being equal to those of the prevailing States.

Finally, it is most emphatically urged that there must not be attributed to Congress an intent to accord

grossly unequal treatment to the various States deriving benefits under the Submerged Lands Act. This is especially true where such inequality of treatment appears to be based not upon broad considerations of national policy, but upon narrow technicalities and fortuitous historical events occurring at times when present questions of ownership were not even dimly perceived.

Conclusion.

For the reasons hereinabove set forth, we respectfully urge that the States of Alabama, Louisiana, and Mississippi are entitled to a rehearing and to the relief they seek.

Respectfully submitted,

STANLEY MOSK,

Attorney General,

By CHARLES E. CORKER,

Assistant Attorney General,

Attorneys for Amicus Curiae State of California.

Proof of Service.

I, the undersigned, of counsel for the State of California, seeking to appear as amicus curiae herein, and a member of the Bar of the Supreme Court of the United States, certify that on the 21 day of September, 1960, I served the required number of copies of the foregoing document, entitled "Motion of State of California for Leave to File Brief *Amicus Curiae,* and Brief of State of California as *Amicus Curiae* in Support of Petitions for Rehearing Filed by the States of Alabama, Louisiana and Mississippi" on all counsel by mailing said copies to the Attorney General and Solicitor General of the United States, respectively, at their offices in the Department of Justice Building, Washington, D. C., and to the Attorneys General of the States of Louisiana, Texas, Mississippi, Alabama, and Florida, respectively, at their principal offices in the capitol cities of said States. Said copies have been sent via air mail, postage prepaid, on the aforesaid date.

STANLEY MOSK,
Attorney General,

By CHARLES E. CORKER,
Assistant Attorney General.